

Confidential March 8, 1998

## GOVERNOR THOMPSON'S RELIABILITY PROPOSAL

### I. Regulatory Solutions

- A. Change the Advance Plan process to a Strategic Energy Assessment per Gard-Moen Reliability Act (GMRA), pp. 19-26 with no material changes.
- B. Increase the minimum size for requiring a CPCN for generation to 100 MW.
- C. Increase the minimum size for requiring a CPCN for transmission on existing right-of-way to 230 kV (transmission construction on new ROW would remain status quo).
- D. Enforceable statutory time lines for review -- 180 day-360 day maximum with pocket approval (multi-state exemption possible).

### II. Merchant Plants wholesale only per definition in GMRA, p. 21 (except as that definition is revised below for affiliate merchant plants).

- A. A wholesale merchant plant shall not be prohibited from making sales to retail customers in another state where permitted by such state's laws. If and when the Wisconsin Legislature authorizes retail competition in Wisconsin, a wholesale merchant plant shall be permitted to compete at retail.
- B. PSC maintains environmental review. (No showing of need or showings related to supply alternatives or engineering or economic factors required, but compliance with remaining factors in sec. 196.491(3)(d)3-6 required.)
- C. A utility affiliate may not own, control, or operate a wholesale merchant plant unless:
  - 1. Utility has placed its transmission in a FERC-approved ISO or FERC-approved regional transmission company that owns no generation and has no financial interest in the regional power and energy markets in the geographic territory of MAPP, MAIN, ECAR, and SPP as of 12/31/97 and is not affiliated with any entity that does (hereafter "other regional transmission entity") that meets the requirements of III.C. below; and

2. The PSC finds that such ownership, control or operation will not impede the objective of achieving competitive electric markets that benefit all classes of customers.
- D. Within 120 days of the effective date of this Act, the PSC shall adopt a rule that sets forth the showing an entity must make to proceed with an affiliate project pursuant to C.1. and 2, defines unacceptable thresholds of horizontal market power consistent with the guidelines applied by the United States Justice Department under the federal antitrust laws, and provides an opportunity for other interested parties to contest an application. The rule shall establish screening tests for proposed affiliate projects and safe harbors, including but not limited to situations where (i) the affiliate is a passive investor in a project and will not be able to exercise control or influence over the project and (ii) where the affiliate owns less than 5% of the project.
- E. The existing or proposed electric generating equipment and associated facilities known as the Stoneman facility as owned and operated by Mid-American Power LLC, an affiliated interest of Wisconsin Public Service Corporation, shall be deemed a wholesale merchant plant as defined in GMRA, p. 21 for purposes of the bill (i.e. it would be exempt from the need standard).
- F. An affiliate wholesale merchant plant may not make long-term firm sales to its utility affiliate. Long-term shall mean any sale of three years or longer. Any sale of less than three years where either party has an option to extend the sale to three years or beyond shall constitute a sale of three years or longer. All transactions between the utility and an affiliate merchant plant shall be subject to PSC review to protect ratepayers. The PSC's authority shall be remedial (i.e., disallowance of costs/refunds for the utility) and shall not void the transaction.
- G. Merchant plants constructed within the geographic territory of MAPP, MAIN, ECAR, and SPP as of 12/31/97 that comply with the provisions in II.C. and II.D. or II.E. shall not be counted in the numerator or denominator when calculating the utility asset cap.
- H. All the assets of foreign public utility corporations affiliated with Wisconsin public utilities and operated on an integrated system basis with such utilities shall be counted in the denominator and not the numerator for the purpose of measuring the percentage limit on the non-utility assets applicable to energy holding companies otherwise subject to ss.196.795(5).

### III. ISO.

- A. Governor to call a regional summit on ISOs.
- B. If a Wisconsin transmission owner has not placed its transmission facilities (as determined by the PSC on a basis consistent with FERC's seven-factor test, subject to FERC review) under the control of a FERC-approved ISO or other FERC-approved regional transmission entity (as defined in II.C.1.) that meets the requirements set forth in III.C. below, by 6/30/00, the PSC shall either:

1. Require membership in an operational, FERC-approved ISO that meets the requirements of III.C. or if such an ISO is not available, then:
2. Impose an ISO that meets the requirements of III.C., or if the owner does not join an ISO in response to such an order, then:
3. Order divestiture of transmission to an independent transmission owning entity, or
4. The Commission shall have the authority to delay imposing one of the structural remedies specified in B.1., B.2 or B.3. above if the transmission owner has filed an application with the FERC, for approval of an ISO, or other regional transmission entity, meeting the requirements of III.C. below, and the Commission determines that such waiver can reasonably be expected to result in the more expeditious creation of a beneficial ISO or other regional transmission entity than would the imposition of B.1., B.2. or B.3. In making this determination, the Commission shall consider the need for a reasonable and prompt transition period to full operational status of the ISO or, in the case of an other regional transmission entity to full unaffiliated operational status in order to ensure continued reliability of the transmission system.

NOTE: Rural electric coops will need to get RUS approval for participation in an ISO.

- C. To qualify under II.C.1. and III.B., an ISO or other regional transmission entity must meet the following requirements:
1. The ISO shall be interstate (regional) in scope. However, the EWU system must be kept intact. ~~It must be planned, operated and constructed as a single system.~~ For this reason, the ISO that WPS, WPL, and WEPCO join must be the same ISO, or if the facilities

are placed under the control of more than one ISO, there must be a long-term joint operating arrangement between the ISOs for the EWU area that achieves the above requirements.

2. The ISO's or other FERC-approved regional transmission entity purpose and duty is to eliminate those advantages in generation, wholesale and retail markets that otherwise might arise from ownership, control or operation of transmission facilities.
3. A transmission owner that is a public utility shall unbundle the transmission component of its retail native load and agree to take service for all of its transmission requirements from the ISO.
4. The ISO or other FERC-approved regional transmission entity has a duty to exercise its powers to ensure that the Wisconsin portion of its system is operated, maintained, planned and expanded to meet the reasonable needs of Wisconsin transmission users dependent on the system for reliable, low-cost and competitively-priced electricity.
5. Subject to required PSC approvals and a right to reasonable compensation, the ISO is able to order the Wisconsin owners to expand the Wisconsin portion of the ISO system or to otherwise cause needed Wisconsin additions to be built. The statute must confer eminent domain authority on whatever entity is designated to own and construct for Wisconsin additions approved by the PSC as needed and in the public interest. (In all events, transmission additions in Wisconsin must remain subject to PSC jurisdiction over siting, construction, need and satisfaction of environmental requirements and standards.)
6. The ISO or other FERC-approved regional transmission entity has sufficient authority over the operations of users of its transmission system to ensure reliability. It shall be a Wisconsin public utility to the extent necessary to meet the requirements of III.C. In all events, transmission additions in Wisconsin must remain subject to PSC jurisdiction over siting, construction, need and satisfaction of environmental requirements and standards. The ISO or other regional transmission entity need not be incorporated in Wisconsin.
7. The owners are obligated to provide maintenance, construction and operational service to the ISO subject to regulatory approval that such services are reasonable and cost-effective.
8. It must be approved by the FERC.

NOTE: (1) Nothing in the statute is intended to resolve issues within the exclusive jurisdiction of the FERC, including pending complaints. (2) The legislative findings and purpose must tie the ISO and other provisions to the public interest in reliability and to the state's traditional jurisdiction over retail service and transmission planning, siting, needs and construction. (3) ss.182.017(1) must be amended to reflect the intent of III.C.3, 5 and 6. (4) In the event that the other regional transmission entity is pursued a limited exemption to ss.196.53 must be crafted to reflect the intent of III.C.6.

#### IV. Transmission Line Construction.

- A. Require PSC to commission a regional transmission constraint study by 9/1/98.
- B. Based on that study, PSC is authorized to order construction of new projects in Wisconsin through 12/31/04.
- C. Nothing in this section should be construed as affecting the inherent powers of the PSCW under the existing statutes.

#### V. Power Plant Construction.

- A. EWU utilities with pending RFPs (WEPCO, WPL, MGE) complete same by date certain.
- B. PSC completes action thereon, including any related CPCNs, by date certain.
- C. The utilities specified in A. above and WPS shall construct or procure by RFP 50 MW (in total) of Wisconsin-based renewable energy resources to be in service by December 31, 2000. The PSC may extend this deadline based on a delay in regulatory approval or other circumstances beyond the reasonable control of the utilities. The utilities shall issue RFPs for this need by September, 1998. The existing MGE project for up to 11 MW of wind power shall qualify to meet its share of this obligation. The utilities shall be entitled to recover all of the costs of these projects in retail rates, subject to prudence principles.

- VI. Rulemakings set forth in the February 11 document related to maintenance standards and cost allocations for out-of-state sales must be required by non-statutory provisions or instituted by the PSC now.

~~NOTE: PUBLIC POWER ACT, SECTION 10.01(1) - PUBLIC POWER BOARD SHALL BE AUTHORIZED TO OBTAIN CHANGES IN THE STATE CAP.~~

**VII. PSC Commitments [non-statutory provision in the bill]—Action by Date Certain in Pending PSC Policy Matters.**

- A. PSC issues administrative rules establishing service standards for generation, transmission and distribution facilities by date certain
- B. PSC opens renewables portfolio docket by a date certain and completes action within a reasonable time
- C. PSC shall adopt by rule a reasonable cost allocation policy for non-Wisconsin, firm retail sales by Wisconsin IOUs from Wisconsin power plants

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